In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 350

DAVID A. RUHL, PETITIONER

v.

RAILROAD RETIREMENT BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals is reported at 342 F.2d 662 (Pet. App. 1a). The opinion of the Railroad Retirement Board is not reported but appears at page 2 of the record filed with this Court.

JURISDICTION

The judgment of the court of appeals was entered on February 24, 1965. Petitioner's timely motion for

rehearing was denied on April 5, 1965. The petition for a writ of certiorari was filed on July 15, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals erred in affirming a decision of the Railroad Retirement Board that petitioner was not entitled to an annuity under the Railroad Retirement Act while he continued his employment with the United States government.

STATUTE INVOLVED

The pertinent portions of the Railroad Retirement Act of 1937, 50 Stat. 307, as amended, 45 U.S.C. 228a-z, are set forth in the Appendix, *infra*, pp. 9-10.

STATEMENT

Under the Railroad Retirement Act, persons aged 65 or over who have completed ten years of railroad employment and have "ceased to render compensated service to any person" may be eligible for an annuity (45 U.S.C. 228b(a)). No annuity may begin to accrue, however, until the day after the applicant has ceased to render compensated service (45 U.S.C. 228b(c)(1)), and no payment may be made unless the applicant has "relinquished such rights as he may have to return to the service of * * * the person by whom he was last employed" (45 U.S.C. 228b(b)). Once an annuity has begun to accrue, one entitled thereto may engage in other employment, but not for

"the person by whom he was last employed" before the accrual date (45 U.S.C. 228b(a), (d)).

Petitioner, having completed ten years of railroad service in 1948, reached age 65 on March 3, 1961. At that time, and for the previous eight years, he was a civilian employee of the Ordnance Ammunition Command of the United States Army Ordnance Corps. On January 29, 1962, while still so employed, he applied for an annuity under the Act. His application was rejected by the Bureau of Retirement Claims on the ground that he could claim no annuity until he ceased work and relinquished any right to return to work for his last employer. A few months later, on August 1, 1962, the Department of Defense was reorganized and the functions of the Army Ordnance Corps were transferred to the newly established Army Materiel Command.[1] Petitioner's position with the Ordnance Corps was thereby abolished, but he was retained to perform essentially the same duties at the same post for the Materiel Command (Pet. App. 2a).

Thereafter, petitioner renewed his application for an annuity. In substance, he alleged that he had terminated his employment with the Army Ordnance Corps, had relinquished all rights to return to its

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[1] See Department of Defense Reorganization Order of January 10, 1962, set out as a note following 10 U.S.C. 3036 (1964 ed.), and Army General Order No. 46, dated July 25, 1962.

After the reorganization, the Army Munitions Command was established as a subordinate unit to the Army Materiel Command, performing the functions previously performed by the Ordnance Ammunition Command.

employ and had accepted a new position with a different employer, the Army Materiel Command. The Bureau of Retirement Claims rejected petitioner's renewed application on the same ground as it had rejected his first application. It ruled that petitioner was still working for his "last person" employer and could not claim an annuity until he left and relinquished his rights to that employment (Pet. 7). The Bureau's decision was affirmed by the Appeals Council of the Railroad Retirement Board (Pet. 7) and by the Board itself (Pet. 8). On direct review, under 45 U.S.C. 228k, the court of appeals affirmed.

ARGUMENT

1. Petitioner's first contention is that neither the Army Ordnance Corps nor the Army Materiel Command is a "person" within the meaning of the Railroad Retirement Act, because the Act's definition of "person" [2] does not expressly include the United States government. He argues, therefore, that he is neither rendering "compensated service to any person" nor serving the "last person by whom he was employed" within the meaning of the Act and is thus entitled to an annuity, notwithstanding the actual fact of his continuing full-time government job.

As this Court has pointed out, however, "[w]hether the word 'person' or 'corporation' includes a state or the United States depends upon the connection in

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[2] 45 U.S.C. 228a(n): "The term 'person' means an individual, a partnership, an association, a joint-stock company or a corporation."

which the word is found." *Ohio* v. *Helvering*, 292 U.S. 360, 370-371. See also *Georgia* v. *Evans*, 316 U.S. 159, 160-161; *Far East Conference* v. *United States*, 342 U.S. 570, 576; *Sims* v. *United States*, 359 U.S. 108, 112. In the context of the Railroad Retirement Act, it is clear that the government is a "person," employment by which must be relinquished before annuities may be paid. In requiring as a prerequisite to the receipt of a Railroad Retirement Act annuity that an applicant cease work for his "last person" employer, Congress sought to encourage older persons to retire from the regular labor force and thereby to make additional jobs available in the economy. In addition, Congress determined that restricting benefits to those who had retired from the labor market would result in the optimum use of the limited annuity funds available.[3] See *United States* v. *Bush*, 255 F. 2d 791, 793-794 (C.A. 3), reviewing the legislative history of the Act. As the court of appeals correctly ruled (Pet. App. 5a), to read the Act as exempting the vast number of government employees from the requirement of terminating and relinquishing future rights to their employment before becom-

[3] While Congress recognized the desirability of permitting annuitants to supplement their retirement benefits through post-retirement employment, it refused to sacrifice the primary goals mentioned above and thus restricted the payment of annuities to those who were no longer serving a railroad or their "last person" employer. In so doing, Congress recognized the fact that a new job undertaken after age 65 was not likely to be competed for by younger members of the labor force or to be highly remunerative (cf. Pet. App. 4a).

ing eligible for annuities would substantially impair its intended operation. Nothing in the Act or its history justifies such a construction. The only other court to consider the interpretation urged by petitioner has also rejected it. *Burke* v. *Railroad Retirement Board*, 165 F. 2d 24 (C.A.D.C.) (State employee). Moreover, as early as 1938, the Board interpreted "person" to apply to a governmental body (R. 107-116). This long-standing construction placed on the Act by the agency entrusted with its administration is entitled to great weight. *Udall* v. *Tallman*, 380 U.S. 1, 16.

2. Petitioner's second argument—that the "person" by whom he was last employed was the Army Ordnance Corps—is insubstantial. There is no difference relevant here between the Army Ordnance Corps and its successor, the Army Materiel Command, by which petitioner is currently employed. Each agency was organized as an integral constituent of the Department of the Army, and petitioner did substantially the same work in the same location both before and after the departmental reorganization. Under these circumstances, the Board and the court of appeals correctly found no basis for the view that petitioner ever "ceased to perform compensated services" for, or "relinquished" the right to return to, his last employer.

3. Petitioner's final argument is that the retirement prerequisites in the Act are unconstitutional because they deprive him, without just compensation, of an asserted contractual right to the annuities established under the Act. In the first place, Railroad

Retirement Act annuities are not contractual but statutory rights, *Murray* v. *Railroad Retirement Board*, 289 F. 2d 386 (C.A. 4), parallel to those later provided under the Social Security Act.[4] See S. Rep. No. 1710, 79th Cong., 2d Sess., Pt. 1, pp. 3-4 and Pt. 2, p. 18. As this Court held in rejecting a similar challenge to the Social Security Act, such statutory programs cannot properly be analogized to accrued or vested property rights. *Flemming* v. *Nestor*, 363 U.S. 603. Accord, *Bernstein* v. *Ribicoff*, 299 F. 2d 248 (C.A. 3), certiorari denied, 369 U.S. 887. The court below correctly applied that rule to the similar legislation in question here. In addition, we point out that the relevant provisions of the Railroad Retirement Act of 1937 have been in effect since its enactment and that all of petitioner's contributions to the annuity program have been made subject to the requirements of which he now complains. See Pet. 17-18, and 50 Stat 435, 440.

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[4] Indeed, in certain circumstances, railroad employment may be credited towards the accrual of Social Security benefits. 45 U.S.C. 228e(k).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1965.

APPENDIX

The pertinent provisions of the Railroad Retirement Act of 1937, 50 Stat. 307, as amended, 45 U.S.C. 228a-z, provide:

45 U.S.C. 228a. *Definitions.*

* * * *

(n) The term "person" means an individual, a partnership, an association, a joint-stock company, or a corporation.

* * * *

45 U.S.C. 228b. *Eligibility for annuities; time of accrual;* [*etc.*]

(a) The following-described individuals, if they shall have been employees on or after the enactment date, and shall have completed ten years of service, shall, subject to the conditions set forth in subsections (b)-(d) of this section, be eligible for annuities after they shall have ceased to render compensated service to any person, whether or not an employer as defined in section 228a(a) of this title (but with the right to engage in other employment to the extent not prohibited by subsection (d) of this section):

1. Individuals who on or after the enactment date shall be sixty-five years of age or over.

* * * *

(b) An annuity shall be paid only if the applicant shall have relinquished such rights as he may have to return to the service of an employer and of the person by whom he was last employed; but this requirement shall not apply to the individuals mentioned in subdivisions 4 and

5 of subsection (a) of this section prior to attaining age sixty-five.

(c) An annuity shall begin to accrue as of a date to be specified in a written application (to be made in such manner and form as may be prescribed by the Board and to be signed by the individual entitled thereto), but—

(1) not before the date following the last day of compensated service of the applicant, and

(2) not more than twelve months before the filing of the application.

(d) No annuity shall be paid with respect to any month in which an individual in receipt of an annuity hereunder shall render compensated service to an employer or to the last person by whom he was employed prior to the date on which the annuity began to accrue. Individuals receiving annuities shall report to the Board immediately all such compensated service.

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